

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

CRP.No. 1162 of 2002()

AA.161/2000 of A.A.(LR),THRISSUR
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REVN. PETITIONER:

1. PALATHODI MUHAMMED, S/O.ALAVI,
KARUVAMBRAM AMSOM & DESOM, ERNAD TALUK,
MALAPPURAM DISTRICT.
2. POONTHOTATHIL NAZAR, HUSSAIN,
S/O.ABDUL RAHIMAN, KARUVAMBRAM AMSOM & DESOM,
ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

1. THE SECRETARY,
MELEPARAMBA MUTHEPPANPARA, HARIJAN SMASANA
COMMITTEE, MANGALASSERY, MALAPPURAM DISTRICT.
2. KARIKKAD DEVASWOM EXECUTIVE OFFICER,
KARIKKAD, MALAPPURAM DISTRICT.
3. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CMP NO.2964/2002 IN CRP NO.1162/2002

DISMISSED

23.7.2007

SD/- PIUS C.KURIAKOSE, JUDGE.

/TRUE COPY/

P.A. TO JUDGE

PIUS C. KURIAKOSE, J.

C.R.P. NO.1162 of 2002

Dated this the 23rd day of July , 2007

O R D E R

The petitioners, who are rival claimants to tenancy rights over a holding having an extent of 53 cents, have filed this Civil Revision Petition impugning the order of the Land Reforms Appellate Authority confirming the order of assignment under Section 72 issued in favour of the first respondent which is the Meleparamba Mutheppanpara Harijan Smasana Committee. Even though the notice was served on the first respondent they have not entered appearance before this court. In stead the Secretary of the first respondent committee has sent a letter to this court informing that the property in question is the burial ground of the members of the Committee, who are all Harijans inhabiting the area having no place other than the property in question for burying their dead.

2. The ground which is most seriously urged by Sri.K.M.Sathianatha Menon, the learned counsel for the petitioners is that the holding in question will not be an agricultural holding and the members of the first respondent committee will not be cultivating tenants eligible for assignment under Section 72. In fact the above contention was urged by the petitioners before the Land Reforms Appellate Authority also. The answer of the first respondent to this contention was that though the property is a burial ground, they are raising cultivation also in the property. The appellate authority has not entered any finding on this controversial question. Strong reliance was placed by the learned counsel for the petitioners on the judgment of this court in **M.D.Seminary v. P.J.John & others (1987 (KLJ) 1231)**. In that case, this court has held that it is only a cultivating tenant who is entitled for assignment of the rights, title and interest of the land owners and intermediaries in view of the statutory fixity conferred on them. The learned Judge, Relying on the earlier judgment of this court in Lakshmy v. Hendry (1981 KLT Short Not. 71 case NO.128), held in that case that only a person who is actually cultivating

the land for the purpose of raising produce from the land will be a cultivating tenant of agricultural land that has been leased out. The learned Judge went on to hold that in order that the tenant becomes eligible for assignment of the land owner's right under Section 72B, he must be a tenant of the holding which belongs to category of land called 'agricultural land'. It is conceded by the respondents before the Tribunal and the appellate authority and this court also, through their letter that principally the land in question is their burial ground.

2. I am of the view that question whether it can be said that the first respondent or its members qualify as cultivating tenants for the purpose of Section 72B has not received requisite attention at the hands of the Tribunal or the appellate authority. It is submitted that another case (S.M.No.539/1996) was initiated by the Land Tribunal, Manjeri for assignment of jenmom rights over the very same holding in favour of the petitioners and that it was ignoring those proceedings the Land Tribunal and the Appellate Authority proceeded to confirm the assignment of jenmon in favour of the first respondent. The learned counsel for the petitioners also point out that concededly an earlier O.A.

was filed by the father of the present Secretary of the first respondent committee for assignment in the year 1980 without success. That ought to have been a minus point for the first respondent. But the Tribunal now treated the same as plus point in favour of the first respondent to hold that the first respondent is in possession of the property. I find force in the submissions of the learned counsel for the petitioners. At the same time, since the first respondent has informed this court that on account of the financial constraints, they are unable to make appearance before this court I do not propose to decide the issue finally.

I direct the Land Tribunal to decide the issue afresh after issuing notice to the petitioners and also to the present functionaries of the first respondent. The Tribunal will verify as to what is the present status of S.M.No.539/1996. The Tribunal while taking fresh decision shall specifically answer the question whether the first respondent can be classified as cultivating tenant for the purpose of Section 72B. Fresh decision as directed above will be taken by the Tribunal at the earliest and at any rate within six months of receiving a copy of this order. It is

however, made clear that as regard the holding in question, the status quo obtaining as of now will be maintained by both sides till fresh orders are passed.

The Civil Revision Petition is allowed as above.

PIUS C. KURIAKOSE,
JUDGE.

Dpk

PIUS C.KURIAKOSE, J

CRP NO.1162 OF 2002

O R D E R

23RD JULY 2007